

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MARK T. DUBLINO,

Plaintiff,

Case # 19-CV-6269-DGL-MJP

v.

SGT. JUSTIN BIEGAJ, et al.,

Defendants.

**PLAINTIFF'S RESPONSE TO DEFENDANTS'
STATEMENT OF MATERIAL FACTS**

Pursuant to Federal and Local Rule of Civil Procedure 56, Plaintiff Mark T. Dublino submits this statement in response to Defendants' Statement of Undisputed Facts.

1. Dublino **ADMITS** the content of Defendants' Statement of Undisputed Facts ("SUF") ¶ 1.
2. Dublino **ADMITS** the content of Defendants' SUF ¶ 2.
3. Dublino **ADMITS** the content of Defendants' SUF ¶ 3.
4. Dublino **ADMITS** the content of Defendants' SUF ¶ 4.
5. Dublino **ADMITS** the content of Defendants' SUF ¶ 5.
6. Dublino **ADMITS** the content of Defendants' SUF ¶ 6.
7. Dublino **ADMITS** the content of Defendants' SUF ¶ 7.
8. Dublino **ADMITS** the content of Defendants' SUF ¶ 8.
9. Dublino **ADMITS** the content of Defendants' SUF ¶ 9.
10. Dublino **ADMITS** the content of Defendants' SUF ¶ 10.
11. Dublino **ADMITS** the content of Defendants' SUF ¶ 11.
12. Dublino **ADMITS** the content of Defendants' SUF ¶ 12.

13. Dublino **ADMITS** the content of Defendants' SUF ¶ 13.

14. Dublino **ADMITS** the content of Defendants' SUF ¶ 14.

15. Dublino **ADMITS** the content of Defendants' SUF ¶ 15.

16. Dublino **ADMITS** the content of Defendants' SUF ¶ 16.

17. Dublino **ADMITS** the content of Defendants' SUF ¶ 17.

18. Dublino **ADMITS** the content of Defendants' SUF ¶ 18.

19. Dublino **ADMITS** the content of Defendants' SUF ¶ 19.

20. Dublino **ADMITS** the content of Defendants' SUF ¶ 20.

21. Dublino **DISPUTES** the content of Defendants' SUF ¶ 21; he testified that the dog was *not* instructed to bite him (*see Defendants' Exhibit A at 29, lines 13-15*).¹

22. Dublino **ADMITS** the content of Defendants' SUF ¶ 22.

23. Dublino **ADMITS** the content of Defendants' SUF ¶ 23.

24. Dublino **ADMITS** the content of Defendants' SUF ¶ 24.

25. Dublino **ADMITS** the content of Defendants' SUF ¶ 25.

26. Dublino **ADMITS** the content of Defendants' SUF ¶ 26.

27. Dublino **ADMITS** the content of Defendants' SUF ¶ 27.

28. Dublino **DISPUTES** the content of Defendants' SUF ¶ 28; Defendant Biegaj testified only that he did not *believe* Dublino complied with his instructions and that "everything was happening very quickly" (*see Defendant's Exhibit H at 17, lines 6-11*).

29. Dublino **DISPUTES** the content of Defendants' SUF ¶ 29; as Dublino testified, Sergeant Biegaj had his knees on Dublino's back and was jumping (*see Defendants' Exhibit A at 31, lines 6-23*).

¹ It appears that Defendants' ¶ 21 was merely a typo based on the deposition testimony cited.

30. Dublino **ADMITS** the content of Defendants' SUF ¶ 30.

31. Dublino **ADMITS** the content of Defendants' SUF ¶ 31.

32. Dublino **ADMITS** the content of Defendants' SUF ¶ 32.

33. Dublino **ADMITS** the content of Defendants' SUF ¶ 33.

34. Dublino **ADMITS** the content of Defendants' SUF ¶ 34.

35. Dublino **ADMITS** the content of Defendants' SUF ¶ 35.

36. Dublino **DISPUTES** the content of Defendants' SUF ¶ 36 and maintains that he complied with orders throughout his interactions with Defendants (*see Defendants' Exhibit A at 24, lines 17-23; 25, lines 1-2*).

37. Dublino **DISPUTES** the content of Defendants' SUF ¶ 37 and maintains that he complied with orders throughout his interactions with Defendants (*see Defendants' Exhibit A at 24, lines 17-23; 25, lines 1-2*).

38. Dublino **ADMITS** the content of Defendants' SUF ¶ 38.

39. Dublino **ADMITS** the content of Defendants' SUF ¶ 39.

40. Dublino **DISPUTES** the content of Defendants' SUF ¶ 40 and maintains that the handcuffs were removed and reapplied with his hands facing outward as described in ¶¶ 38-39. Defendants Gelster and Robinson testified only that they could not recall whether Dublino's handcuffs were adjusted (*see Defendants' Exhibit D at 26, lines 15-25 & at 27, lines 1-3; Exhibit E at 39, lines 4-7*).

41. Dublino **ADMITS** the content of Defendants' SUF ¶ 41.

42. Dublino **DISPUTES** the content of Defendants SUF ¶ 42 and maintains that Defendants Dee and Wilson grabbed his arms and hands and bent and twist them in an abnormal fashion (*see Defendants' Exhibit A at 34 (lines 22-23) thru 39*).

43. Dublino **ADMITS** the content of Defendants' SUF ¶ 43.

44. Dublino **DISPUTES** the content of Defendants SUF ¶ 44 and maintains that Sergeant Cross stomped on him as set forth in ¶ 43.

45. Dublino **DISPUTES** the content of Defendants SUF ¶ 45 and maintains that Sergeant Cross stomped on him as set forth in ¶ 43.

46. Dublino **ADMITS** the content of Defendants' SUF ¶ 46.

47. Dublino **ADMITS** the content of Defendants' SUF ¶ 47.

48. Dublino **ADMITS** the content of Defendants' SUF ¶ 48.

49. Dublino **ADMITS** the content of Defendants' SUF ¶ 49.

50. Dublino **DISPUTES** the content of Defendants' SUF ¶ 50 and maintains that Sergeant Robinson ordered Defendants Gelster and Giardina to "wrench him" as set forth in ¶ 46.

51. Dublino **DISPUTES** the content of SUF ¶ 51 and maintains that Defendants Gelster and Giardina wrenched his arms as set forth in ¶ 47.

52. Dublino **ADMITS** the content of Defendants' SUF ¶ 52.

53. Dublino **DISPUTES** the content of Defendants' SUF ¶ 53 and maintains that he complied with orders throughout his interactions with Defendants (*see Defendants' Exhibit A at 24, lines 17-23; 25, lines 1-2*).

54. Dublino **DISPUTES** the content of Defendants' SUF ¶ 54 and maintains that the dog bit his right hand while going after his leg, upper thigh, and buttocks (*see Defendants' Exhibit A at 25 lines 9-23; 26, lines 1-3*).

55. Dublino **ADMITS** the content of Defendants' SUF ¶ 55.

56. Dublino **ADMITS** that the report exists but maintains that he was not actually examined (*see Defendants' Exhibit A at 47, lines 17-20*).

57. Dublino **ADMITS** the content of Defendants' SUF ¶ 57.

58. Dublino **ADMITS** that the report exists but maintains that he was not actually examined (*see Defendants' Exhibit A at 50-53*).

59. Dublino **DISPUTES** the content of Defendants' SUF ¶ 59; as he clearly wrote at the top of the form, he was not refusing medical care and was denied the opportunity to go to the hospital (*ECF No. 32-6 at 25*).

60. Dublino **ADMITS** the content of Defendants' SUF ¶ 60.

61. Dublino **DISPUTES** the content of Defendants' SUF ¶ 61 and maintains that he was not offered x-rays (*see Defendants' Exhibit A at 47, line 8; 48, line 6; 55, line 22*).

62. Dublino **ADMITS** the content of Defendants' SUF ¶ 62.

63. Dublino **ADMITS** the content of Defendants' SUF ¶ 63.

64. Dublino **ADMITS** the content of Defendants' SUF ¶ 64.

65. Dublino **ADMITS** the content of Defendants' SUF ¶ 65.

66. Dublino **ADMITS** the content of Defendants' SUF ¶ 66.

67. Dublino **ADMITS** the content of Defendants' SUF ¶ 67.

68. Dublino **ADMITS** the content of Defendants' SUF ¶ 68.

Dated: December 15, 2021
Rochester, New York

BY: s/ Steven V. Modica
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